

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 12-PM-10255-LMA
)	
DENNIS REID HOPTOWIT)	ORDER GRANTING MOTION TO
)	REVOKE PROBATION, DISCIPLINE
Member No. 61544)	RECOMMENDATION AND
)	INVOLUNTARY INACTIVE
A Member of the State Bar.)	ENROLLMENT ORDER

INTRODUCTION

The Office of Probation, represented by Terrie Goldade, filed a motion pursuant to Business and Professions Code sections 6093, subdivision (b) and 6093, subdivision (c)¹ and rules 5.310 et seq. of the Rules Proc. of State Bar² to revoke the probation of respondent Dennis Reid Hoptowit. Respondent did not participate in this proceeding although he was properly served with the motion and an addition thereto by certified mail, return receipt requested, and by regular mail at his State Bar membership records address.

For the reasons stated below, the court finds by a preponderance of the evidence that respondent wilfully failed to comply with the terms of his probation. (Section 6093, subd. (c).) As a result, the court grants Office of Probation's motion to revoke his probation and the request to involuntarily enroll him as an inactive member of the State Bar pursuant to section 6007, subdivision (d). The court recommends that respondent's probation be revoked, that the

¹Future references to section are to this source.

²Future references to rule are to this source.

previously-ordered stay be lifted and that he be actually suspended from the practice of law for two years and until he complies with standard 1.4(c)(ii), Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,³ as more fully set forth below.

FINDINGS OF FACT

Jurisdiction

Respondent was admitted to the practice of law in California on December 18, 1974, and has been a member of the State Bar at all times since.

Probation Violations

On April 22, 2011, the State Bar Court filed an order approving the stipulation of the parties in State Bar Court case nos. 10-C-01302; 10-O-05060 (10-O-05713;10-O-10966) recommending discipline consisting of two years' stayed suspension and two years' probation, among other things. A copy of the stipulation and the State Bar Court's order approving same were properly served upon respondent's counsel on that same date.

On August 31, 2011, the California Supreme Court filed an order, S194324, accepting the State Bar Court's discipline recommendation and ordering respondent to comply with the conditions of probation recommended, including the following, with which respondent did not comply:

(a) Within 30 days of the effective date of discipline, contacting the Office of Probation to schedule a meeting to discuss the terms and conditions of probation. Respondent did not do so;

(b) During the period of probation, submitting a written report to the Office of Probation on January 10, April 10, July 10 and October 10 of each year or part thereof during which the probation is in effect stating under penalty of perjury that he has complied with all provisions of the State Bar Act and Rules of Professional Conduct during said period (quarterly report). Respondent has not submitted the quarterly report due on the 10th of January 2012;

³ Future references to standard or std. are to this source.

(c) Attending at least eight meetings per month (at least two per week) of an abstinence-based self-help group of his choosing, including Alcoholics Anonymous (hereafter, collectively AA) and approved by the Office of Probation. Respondent was also supposed to provide to the Office of Probation proof of attendance at these meetings on or before the 10th of the following month. Respondent did not contact the Office of Probation to obtain approval for a self-help program of his choosing nor has he provided proof of attendance at any meetings in October, November and December 2011. He did not file the reports due on the 10th of November and December 2011 and January 2012;

(d) Selecting a licensed medical laboratory approved by the Office of Probation and furnishing to the laboratory blood and/or urine samples as may be required to show that he had abstained from alcohol and/or drugs. Respondent was to cause the laboratory to provide to the Office of Probation, at his expense, a screening report on or before the 10th of each month containing an analysis of his blood and/or urine obtained not more than 10 days previously. Respondent has not submit his choice of a laboratory for the Office of Probation's approval or have the laboratory provide reports for the tests due on the 10th of November and December 2011 and January 2012;

(e) Maintaining with the Office of Probation a current address and telephone number where he could be reached since he was to return any calls concerning testing within 12 hours. He has not contacted the Office of Probation to provide this information;

(f) Providing the Office of Probation with medical waivers and access to all of his medical records upon its request. Although requested by email and regular mail on October 28, 2011, to do so,⁴ respondent has not complied; and

(g) Answering fully, promptly and truthfully any inquiries from the Office of Probation directed to respondent as to whether he was complying or had complied with his probation conditions. Respondent has not complied since he has not returned the Office of Probation's telephone call/voicemail of October 28, 2011 or otherwise communicated with the Office of Probation.

⁴ The email was delivered and the letter was not returned as undeliverable.

The Supreme Court order became effective on September 30, 2011, thirty days after it was entered. (Rule 9.18(a), California Rules of Court.) It was properly served on respondent.⁵

On October 28, 2011, the Office of Probation wrote a letter to respondent, properly sent to him at his official address and also emailed, reminding him of certain terms and conditions of his suspension and probation imposed pursuant to the Supreme Court's order and enclosing, among other things, copies of the Supreme Court's order, the probation conditions portion of the stipulation, instruction sheets or forms to use in submitting quarterly reports and proof of restitution, as well as scheduling and enrollment information for Ethics School.

On that same date, the Office of Probation left respondent a voicemail at his State Bar membership records telephone number asking that he return the call regarding a probation matter. He did not do so.

On December 5, 2011, the Office of Probation properly sent respondent a letter to his official address indicating that he had not scheduled the initial meeting with the probation deputy; selected a lab for monthly testing or submitted lab test results or AA attendance reports for November 2011, among other things.

Neither letter was returned as undeliverable or for any other reason.

Respondent did not comply with the conditions of probation as set forth above.

CONCLUSIONS OF LAW

Pursuant to section 6093, subdivisions (b) and (c) and rule 5.311, the court concludes that Office of Probation has demonstrated by a preponderance of the evidence that respondent wilfully violated the conditions of probation regarding contacting or responding to inquiries from the Office of Probation, quarterly reports, selection of an approved laboratory for monthly

⁵Although no proof was offered that the Clerk of the Supreme Court served the Supreme Court's order upon respondent, rule 8.532(a) of the California Rules of Court requires clerks of reviewing courts to immediately transmit a copy of all decisions of those courts to the parties upon filing. Moreover, it is presumed pursuant to Evidence Code section 664 that official duties have been regularly performed. (*In Re Linda D.* (1970) 3 Cal.App.3d 567, 571.) Therefore, in the absence of evidence to the contrary, this court finds that the Clerk of the Supreme Court performed his or her duty and transmitted a copy of the Supreme Court's order to respondent immediately after its filing.

testing, submitting its monthly test results and monthly attendance reports at approved self-help meetings and providing medical waivers and responding to inquiries from the Office of Probation as ordered by the Supreme Court in S194324, as more fully set forth above.

AGGRAVATING CIRCUMSTANCES

In aggravation, respondent has two prior records of discipline. (Std. 1.2(b)(i).) In S194324, respondent and the State Bar stipulated to his culpability in a client trust account matter and two client matters of violating rules 3-700(D)(1) and 4-100(A) of the Rules of Professional Conduct and section 6068, subdivision (i) as well as being disciplined for a conviction pursuant to Vehicle Code section 23152, subdivision (b). Aggravating factors included one prior instance of discipline, dishonesty, lack of cooperation and multiple acts of misconduct. There were no mitigating factors.

In S080822 (State Bar Court case nos. 97-C-13772; 97-O-14919), the Supreme Court imposed discipline consisting of 90 days' actual suspension and one year's probation. Respondent and the State Bar stipulated to his culpability in one client matter to violations of rule 4-100(A) of the Rules of Professional Conduct and section 6068, subdivision (m) and (a), the latter based on a conviction pursuant to Vehicle Code section 23152, subdivision (b) with a prior conviction pursuant to Vehicle Code section 23152, subdivision (a). Mitigating factors included no prior discipline and candor and cooperation. There were no aggravating factors.

Respondent engaged in multiple acts of misconduct. (Std. 1.2(b)(ii).)

Further, respondent's failure to comply with the probation conditions after being reminded by the Office of Probation demonstrates indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).)

MITIGATING CIRCUMSTANCES

It is respondent's burden to establish mitigating factors, but he did not participate in this proceeding. Accordingly, no mitigating factors are found.

DISCUSSION

Section 6093 authorizes the revocation of probation for a violation of a probation condition, and standard 1.7 requires that the court recommend a greater discipline in this matter than that imposed in the underlying disciplinary proceeding, but any actual suspension cannot exceed the period of stayed suspension imposed in the underlying proceeding. (Rule 5.312.) The extent of the discipline to recommend is dependent, in part, on the seriousness of the probation violation and respondent's recognition of his misconduct and his efforts to comply with the conditions. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.)

The court agrees with the Office of Probation's request that respondent be actually suspended for the full amount of stayed suspension, two years, to continue until respondent complies with standard 1.4(c)(ii). Respondent was aware of the terms and conditions of his disciplinary probation, yet failed to comply with them despite reminders from Office of Probation.

The prior disciplinary order "provided [respondent] an opportunity to reform his conduct to the ethical strictures of the profession. His culpability in [the matter] presently under consideration sadly indicates either his unwillingness or inability to do so." (*Arden v. State Bar* (1987) 43 Cal.3d 713, 728.) Accordingly, after considering the misconduct and the aggravating and mitigating circumstances, the court recommends, among other things, two years' actual suspension to continue until he complies with standard 1.4(c)(ii) during which time he will have the opportunity of demonstrating that he is desirous and able to meet these important ethical obligations in the timely and serious fashion expected of California attorneys. The court expects no less from respondent.

DISCIPLINE RECOMMENDATION

The court recommends that the probation of respondent Dennis Reid Hoptowit, previously ordered in Supreme Court case matter S194324 (State Bar Court case nos. 10-C-01302; 10-O-05060 (10-O-05713;10-O-10966)), be revoked; that the previous stay of execution of the suspension be lifted, and that respondent be suspended from the practice of law in

California for two years. Respondent must provide proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std 1.4(c)(ii).)

It is also recommended that the Supreme Court order respondent to comply with rule 9.20(a) of the California Rules of Court within 30 calendar days after the effective date of the Supreme Court order in the present proceeding and to file the affidavit provided for in rule 9.20(c) within 40 calendar days after the effective date of the order showing respondent's compliance with said order.⁶

It is not recommended that respondent be ordered to successfully complete State Bar Ethics School or to take and pass the Multistate Professional Responsibility Examination as he was ordered to do so in Supreme Court matter S194324 (State Bar Court case nos. 10-C-01302; 10-O-05060 (10-O-05713;10-O-10966)).

COSTS

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER REGARDING INACTIVE ENROLLMENT

Respondent is involuntarily enrolled inactive pursuant to Business and Professions Code section 6007, subdivision (d). The requirements of section 6007, subdivision (d)(1) have been met: Respondent was subject to a stayed suspension, was found to have violated probation conditions, and it has been recommended that respondent be actually suspended due to said violations.

⁶Respondent is required to file a rule 9.20(c) affidavit even if he has no clients. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 130.)

IT IS THEREFORE ORDERED that respondent Dennis Reid Hoptowit be involuntarily enrolled as an inactive member of the State Bar of California pursuant to Business and Professions Code section 6007, subdivision (d). This enrollment shall be effective three days following service of this order.

IT IS ALSO ORDERED that his inactive enrollment be terminated as provided by Business and Professions Code section 6007, subdivision (d)(2).

IT IS RECOMMENDED that respondent's actual suspension in this matter commence as of the date of his inactive enrollment pursuant to this order. (Business and Professions Code section 6007, subdivision (d)(3).)

Dated: March _____, 2012

LUCY ARMENDARIZ
Judge of the State Bar Court